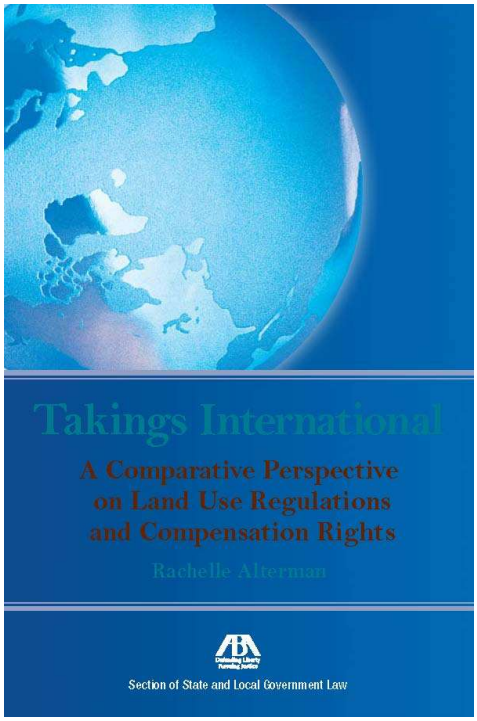


# Takings International

## A Comparative Perspective on Land Use Regulations and Compensation Rights

*Rachelle Alterman et al*

*Published in 2010 by ABA Press*

**Chapter 13**
PRE-PUBLICATION VERSION

# Chapter 13

# POLAND

**After decades of communism and gross infringements of property rights, Poland's new planning act provides broad compensation rights for regulatory takings (under certain conditions). Jurisprudence and scholarship are supportive. However, due to landowners' lack of knowledge and a still-evolving land use system, claim numbers are as yet very low.**

MIROSLAW GDESZ[1]

The purpose of this Chapter is to examine the role of compensation rights in property reduction due to planning decisions in Poland. Poland is a post-communist country that has been reforming its planning laws and land-use laws since the early 1990s. Unfortunately, the reforms have not yet achieved adequate results. Moreover, the government does not seem to have a clear vision for land planning reform.

The issue of compensation for planning injuries has not drawn the attention it merits in Poland after its resumption of democracy. The courts have reached inconsistent outcomes, and are not sensitive enough to the negative impacts of planning decisions. There is no convincing legal doctrine on this subject. The absence of scholarly opinion is surprising, especially taking into account the large number of properties left with little economic value by planning regulations in the past several years. By contrast, the reverse side of compensation – betterment taxation and planning gain - captures much more attention of both academics and the courts. Currently, there is discussion of introducing a compulsory betterment levy to substitute for the discretionary one existing today. A recent decision of the European Court of Human Rights concerning a case of regulatory taking in Poland[2] (to be discussed later) did raise the profile of the compensation issue somewhat, but its impacts may not be as significant as one would have hoped.

Part one of this chapter briefly explains the historical background of Polish land planning. Part two focuses on the constitutional rules concerning the protection of private property and their effects on land-use law and discusses the degree of influence on Polish law of the jurisprudence of the European Convention on Human Rights. The third part examines the legal foundation for compensation claims for direct injuries of two types: those entailing major injuries in expropriation-like situations, and those entailing minor depreciation in land values caused by what Americans may call a "partial taking" or a "downzoning". I then move to discuss indirect planning injuries to adjacent land creating an "injurious affection". The subsequent part

---

[1] Dr. Gdesz is a judge in the regional Administrative Court in Warsaw. He is also a researcher at the Institute of Spatial Planning and Housing (Instytut **Gospodarki** Przestrzennej i Mieszkalnictwa). Holds a PhD in law from the Adam Mickiewicz University in Poznan; and a master's degree in law from Jagiellonina University.

2. See Skibinska & Skibinski v. Poland,, 2006 IV Eur. Ct. H. H.R. (link (http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Skibinscy&sessionid=11812330&skin=hudoc-en)

discusses the conditions that must be met in making of compensation claims. Part six considers both the liability issues and the procedural aspects of planning injuries, and the final part presents some conclusions from the Polish case.

## H1. HISTORICAL BACKGROUND

### *H2 Polish Building Decree of 1928*

The legal framework allowing compensation for the decline in the value of private property has a long history in Poland. It was first introduced in the late 1920s. Provisions of regulatory taking were contained in article 47 of the Building Decree of 1928.[3] According to this regulation, an owner might claim compensation for the depreciation in the value of land caused by a building prohibition introduced by a local plan. This decree remained in force until 1946. Compensation for expropriation was subsequently addressed in the Expropriation Decree of 1934, which also included statutory provisions for situations when only part of a plot of land is expropriated and the remainder is injuriously affected.[4]

### *H2 Planning Decree 1946*

After World War II, the introduction of communism caused dramatic changes in the protection of private property, and the idea of regulatory taking declined. A centralized economy was established, and the government linked planning law with its centralized economic plans. As a result, planning law was used as a tool of the communist regime. The Land Planning Decree of 1946[5] did not contain provisions relating to compensation for planning injuries.

### *H2 Communist Planning from 1961 to 1990*

Regulatory taking provisions were not included in the Planning Law Act of 1961.[6] Planning decisions during this time period aggressively challenged the very notion of ownership. For example, many public roads and electricity corridors were built on private plots without the permission of the owners.[7] Communist local plans, based on a central plan, introduced significant restrictions on the use of property, with no subsequent obligation to compensate the owner of the regulated and restricted property. Many properties designated for land for public purposes were frozen and could not be developed for many years without compensation rights. At the same time, the Expropriation Act of 1958[8] did contain provisions for injurious affection, mandating the purchase of retained land that was injuriously affected by the expropriated part. This legal framework was repeated in the Planning Act of 1984 (but, as we shall see, is lacking

3. Building Decree of 1928, Dz. U. of 1939, No. 34, item 216 (Pol.).

4. According to article 28 of the Expropriation Decree of 1934, compensation is payable not only for the value of land taken, but also for consequential damage to retained land. Expropriation Decree of 1934, Dz. U. of 1934, No. 86, item 776, art. 28 (amended Apr. 15, 1939) (Pol.).

5. Land Planning Decree of 1946, Dz. U. of 1946, No. 16, item 109 (amended June 6, 1958) (Pol.).

6. Planning Law Act of 1961, Dz. U. of 1961, No. 7, item 47 (amended Jan. 1985) (Pol.).

7. Renata Krupa-Dabrowska, *Odszkodowanie dla wl ascieciela za lata zawieszenia jego praw* [*Owner's Compensation for Years of Abrogation of His Rights*], RZECZPOSPOLITA, Dec. 21, 2005 (Pol.).

8. Expropriation Act of 1958, Dz. U. of 1974, No. 10, item 64 (amended July 1, 1982) (Pol.).

today).[9]

*H2. The Land Management Act of 1994: The First Stage of Reforms*

After the demise of the communist regime in Poland, the right to compensation for planning injuries was re-introduced in the provisions of the Land Management Act of 1994 which came into force on January 1, 1995.[10] This law established the basic elements of compensation rights, that still hold today (subsequent legislation in 2003 did not introduce major changes). The 1994 law granted substantially broader compensation rights than article 47 of the Building Decree of 1928. Article 36 states[11]:

> "If the value of a plot of land declines as a result of the approval of or a change to the local spatial development plan, and the owner or party having perpetual usufruct of the land sells this real estate not having previously taken advantage of the rights provided in paragraph 1, he may demand compensation equal to the decline in value in the real estate from the municipality".

The LMA Act of 1994 introduced an obligation on local authorities either to (1) buy plots that were significantly affected by local master plans, (2) replace those plots with other plots within six months from the date on which a relevant request was submitted, or (3) to award compensation for the real losses caused by the introduction of the plan.

Transition regulations contained in article 68 of LMA 1994 limited the scope of compensation claims to injuries caused by local plans approved after January 1, 1995.[12] Thus, the obligation of local authorities under article 36 applies only to local master plans that were adopted after LMA 1994 came into force. These transition regulations reflected the major transformations that Poland underwent from communist modes to democratic and market-led modes. However, many landowners were negatively impacted. Four of the legal controversies surrounded these transition regulations were appealed all the way up to the European Court of Human Rights and will be discussed in Section D below.

In 2003 a new Act replaced the 1994 LMA, but did not institute major changes regarding the rights to compensation. This new law will be the focus of the analysis in Part III below.

## H1. CONSTITUTIONAL RULES AND INTERNATIONAL CONVENTION ASPECTS

*H2. Protection of Property Rights Rule*

Several provisions of the 1997 Polish Constitution protect private property rights.[13] First, article 64(3) of the Constitution lays down the principle of property rights protection. It states

---

9. Naczelny Sąd Administracyjny [NSA] [Supreme Administrative Court] IV SA 1040/91 (Dec. 17, 1991) (Pol.) (stating that if provisions of local plans deprived an owner of his right to use property, the property should be acquired or exchanged) (unpublished opinion).

10. "Land management" is a literal translation from the Polish, but a more suitable term in English would have been "planning". Land Management Act of 1994, Dz. U. of 1999, No.15, item 139 (amended Mar. 30, 2001) (Pol.). *See also* HAUSER ET AL., COMMENTARY ON THE PLANNING ACT 1994, at 87 (1995).

11. Land Planning Act of 1994 art. 36. *Id*.

12. Trybunal Konstytucyjny [TK] [Constitutional Tribunal] Sygn. akt K 6/95 (Dec. 5, 1995) (Pol.) (stating that article 68 does not conform to article 1, article 7 and article 67, section 2 of the Constitution of 1992).

13. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [KRP] [CONSTITUTION OF THE REPUBLIC OF POLAND] Dz. U. of 1997, No. 78, item 483 (adopted Apr. 2, 1997) (amended Apr. 4, 2001).

that "[e]veryone shall have the right to ownership, other property rights and the right of succession. [And e]veryone, on an equal basis, shall receive legal protection regarding ownership, other property rights and the right of succession."[14]

Property rights are not absolute, but are qualified by social considerations. As the Constitutional Court has put it:

> Contemporary legal thinking has rejected the idea of ownership, especially ownership of real estate, as a right governed solely by the individual interests of an owner: the social aspect of ownership is now unanimously recognized. Accordingly, ownership is not absolute in character and may be subject to limitations. In Polish law, such thinking was expressed in the definition of the right of ownership: within the meaning of Article 140 of the Civil Code, all owners' rights and privileges are limited by statute, principles of morality and the socio-economic purpose of this right. The constitutional basis for limiting the right of ownership is Article 64(3) of the Constitution.[15]

However, to date there is no jurisprudence to concretize "social obligation", so this notion has remained largely theoretical

*H2. Expropriation and regulatory takings*

Polish constitutional jurisprudence interprets the concept of expropriation quite broadly, as potentially including regulatory takings.

Article 21, section 2 of the Polish Constitution states that "[e]xpropriation may be allowed solely for public purposes and for just compensation."[16] The term *"*expropriation" (eminent domain in American lingo) is defined in article 112 of the Land Administration Act of 1997 ("LAA 1997") as a physical taking.[17] The Constitutional Court, however, has interpreted this term more broadly to include all forms of taking.[18] In its judgment on May 8, 1990, the Constitutional Court declared, for the first time, that "expropriation" encompasses every type of depravation of property for public purposes.[19] As stated by the Court in the judgment of April 12, 2000, the definition of "expropriation" contained in LAA 1997 is too narrow[20]. In constitutional terms, "expropriation" should be seen as is *any public action* that reduces property value beyond a specified minimum percentage and requires payment by the public for "lost" value above this

---

14. *Id.* art. 64(3).

15. Trybunal Konstytucyjny [TK] [Constitutional Tribunal] K 9/04 (Mar. 15, 2005) (Pol.), *available at* http://www.trybunal.gov.pl/OTK/teksty/otkpdf/2005/K_09_04.pdf. For an unofficial summary of the decision in English, see Relinquishing Ownership of Real Estate and Interest of Communes, http://www.trybunal.gov.pl/eng/summaries/documents/K_9_04_GB.pdf.

16. KRP art. 21(2).

17. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, art. 112 (amended Oct. 13, 2005) (Pol.).

18. *See* SYLWIA JAROSZ-ŻUKOWSKA, KONSTYTUCYJNA ZASADA OCHRONY WŁASNOŚCI [CONSTITUTIONAL PROPERTY PROTECTION RULE] 230 (2003).

19. Trybunal Konstytucyjny [TK] [Constitutional Tribunal] K 1/90 (May 8, 1990) (Pol.).

20. TK Sygn. K 8/98 (Apr. 12, 2000) (Pol.). In article 112, the Land Administration Act of 1997 defines expropriation as deprivation or limitation, by force of a government decision, of the right of ownership, the right of perpetual usufruct or other rights to property, i.e., mortgage. Land Administration Act of 1997 art. 112.

level. Thus, it is possible to compare the term "expropriation" used in the Polish Constitution with the term "taking" used in the Fifth Amendment of the United States Constitution.[21] Most Polish legal scholars support the broader interpretation of the expropriation clause.[22]

*H2. The Just Compensation Rule*

The second rule set out in article 21, section 2 guarantees that private property shall not be taken without just compensation.[23] The Constitution does not use the term "full compensation." The standard way to decide on the amount of compensation is to use the fair market value of the property taken.[24]

However, a number of acts provide for insufficient compensation. The most important example that affects many landowners is the Act on Designation and Construction of Public Roads. Reflecting the policy to create an acceptable road system in quickly developing Poland, this Act states that landowners will receive compensation based on the value of the land use that preceded the designation for roads. For example, if the land was designated for housing five years ago, the landowners won't receive the current value of equivalent residential land, but only the value prior to the designation for the road. Because property values in post-communist Poland have been rising steeply, the differences may be very significant and landowners cannot buy equivalent land for the sum they receive. Reflecting public dismay, Parliament amended the law in 2008, providing that each landowner of a housing plot will receive an extra sum (equivalent to about 3000 EU) above the historic value (this is an even sum, regardless of the size of the plot or its value).

Since the demise of communism in 1990, the Constitutional Court has repeatedly emphasized that just compensation should be based on the value of property taken; that is, the amount of compensation should give owners the ability to restore themselves to their prior situation before the taking. However, the Court has not clarified the standard of just compensation. The Court holds that just compensation is related to the value of taken property. However, in a 2004 decision, the Court found it significant that the constitutional legislator did not employ the term "full compensation," but instead used the adjective "just." The Court noted that "just compensation" is more flexible, accommodating situations where other important constitutional values justify payment of less than full compensation, yet still fulfilling the standard of being "just.[25] It is illegal, however, to limit the amount of compensation in an arbitrary manner.

As noted, in its jurisprudence, the Constitutional Court has interpreted the concept of

---

21. U.S. CONST. amend. V.

22. *See* BOGUSLAW BANASZAK, PRAWO KONSTYTUCYJNE [CONSTITUTIONAL LAW] 244 (2001); JERZY ONISZCZUK, KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ W ORZECZNICTWIE TRYBUNAŁU KONSTYTUCYJNEGO NA POCZĄTKU XXI W. [CONSTITUTION IN THE JUDGMENTS OF THE CONSTITUTIONAL COURT IN THE BEGINNING OF THE TWENTY-FIRST CENTURY] 196 (2004); FRYDERYK ZOLL, Prawo własności w Europejskiej Konwencji Praw Człowieka z perspektywy polskiej, Przegląd Sądowy 5/1998 [PROPERTY RIGHT IN EUROPEAN COURT OF HUMAN RIGHTS FROM A POLISH PERSPECTVE], 5 PREZEGLAD SADOWY [JUDICIAL REVIEW] 24, 31 (1998) (Pol.).]

23. KONSTYTUCJA RZECZYPOSPOLITEJ POLSKIEJ [KRP] [CONSTITUTION OF THE REPUBLIC OF POLAND] art. 21(2).

24. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, arts. 128–135 (amended Oct. 13, 2005) (Pol.).

25. Trybunal Konstytucyjny [TK] [Constitutional Tribunal] SK 11/02 (July 20, 2004) (Pol.).

expropriation to possibly encompassing regulatory takings. For example, in a 2003 decision, the Court stated that the mechanism of compensation introduced by planning law for regulatory taking is a form of compensation for expropriation under the meaning of "just compensation" in article 21, section 2 of the Constitution.[26] From this judgment, it may be interpreted that article 21 protects property owners against reductions in property value caused by regulatory takings. The Court has thus developed a doctrine whereby the just compensation rule should include compensation for any decrease in the value of property. The decrease in value is to be determined by the market value or the property. The Court states that the just compensation rule is universal in its meaning, and should be used in every case concerning interference with private property rights due to a specified public purpose.[27]

*H2 The European Convention of Human Rights*

The European Convention for the Protection of Human Rights and Fundamental Freedoms[28] (ECHR) was ratified by Poland in 1993. Protocol No. 1 to the ECHR[29] is an important instrument for the protection of private property.[30] Since Poland's ratification of the ECHR, everyone whose rights are violated by Poland has an effective legal remedy against the actions of government authorities.[31] Article 1 of the First Protocol of the ECHR – the main instrument to protect private property - limits the ability of public authorities to interfere with private property rights.[32] Article 1 of the First Protocol is directed principally to the "depreciation" of property, although it may also apply to "control of use."[33] However, it is not the only relevant article. Equally important in land use law are the articles governing the right to a fair trial,[34] the right to protect one's private life, family life, and home,[35] and the prohibition of discrimination.[36]

Polish courts rarely apply the provision of the ECHR directly. However, several recent

---

26. Trybunal Konstytucyjny [TK] [Constitutional Tribunal] K 37/02 (Nov. 25, 2003) (Pol.)
27. *Id*.
28. European Convention on Human Rights, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR].
29. Poland ratified Protocol 1 of the European Convention on Human Rights in 1994.
30. Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, 213 U.N.T.S. 262 [hereinafter Prot. 1 ECHR].
31. ECHR, *supra* note 28, art. 13. "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." *Id*.
32. Article 1 of Protocol 1 of the European Convention on Human Rights provides:
> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

ECHR Prot. 1, *supra* note 30, art. 1.
33. *See* Sporrong v. Sweden, 5 Eur. H.R. Rep. 35 (1982). Claims for interference with the enjoyment of property because of public works or use may also arise under art. 8 (right to a home). *See, e.g.*, Lopez Ostra v. Spain, 20 Eur. H.R. Rep. 277 (1994); Hatton v. UK, 34 Eur. H.R. Rep. 1 (2002).
34. *Id*. art. 6.
35. *Id*. art. 8.
36. *Id*. art. 14.

judgments of the European Court of Human Rights concerning Poland have strongly influenced matters related to property protection and land use law.

Four of the legal controversies surrounded the transition regulations of 1995. As noted above, these regulations exempted the authorities from the obligations in the 1994 LMA to compensate properties negatively affected by planning decisions made prior to 1995. Four among the cases that engaged Polish courts were appealed all the way up to the European Court of Human Rights. The decisions were delivered between 2006 and 2008. The cases involve situations where plots of land had been designated for public purposes for 10-24 years by local plans adopted during communist times, but the authorities did not take action to expropriate these (and thus pay compensation).

The Court ruled that in the absence of a reasonable timeframe, these planning decisions had violated Article 1 of Protocol No. 1 to the European Convention on Human Rights. Nevertheless, regarding three out of the four the Court dismissed the compensation claims for pecuniary damages, only accepting that the owners had suffered some distress as a result of the violations. The Court therefore awarded the applicants jointly EUR 5,000 for non-pecuniary damages. Thus, these judgments were in effect pyrrhic victories for the affected landowners.

European law is expected to continue to influence Poland's land-use laws in the near future. If and when a European Constitution (or a similar document) is adopted by member states, it will include the European Union Charter of Fundamental Rights.[37] Article 17 of the European Union Charter of Fundamental Rights would be particularly influential because it states the following:

> [e]veryone has the right to own, use, dispose of, and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions . . . except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.[38]

## H1 . INTRICUTION TO THE POLISH PLANNING SYSTEM AND TYPES OF COMPENSABLE DECISIONS

The Polish planning system has transformed from centralized national planning toward municipal autonomy. Today, there is no efficient national-level planning. Likewise, regional plans play a marginal role in the system of planning; nor is planning comprehensive at the local and regional levels. Currently, local land-use plans, which are prepared and approved by municipalities, are the main instruments of regulating development. The plans are mandatory in only a few areas, such as coal-mines and special-protection areas. For other areas, these plans are optional and are being prepared gradually.

Local plans set the legally-binding directives for the type and degree of building, minimum dimensions of building plots, and spaces designated for public purposes. Local plans are the only type of binding plans set out by the planning law (higher level plans are advisory only). Currenlty, only a small part of the country – and small parts of urban areas – are covered by valid local plans. The types of master plans that had covered cities in communist times were deemed

---

37. Charter of Fundamental Rights of the European Union, Dec. 7, 2000, 2000 O.J. (C 364) 1, *available at* http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[38] *Id*. art. 17.

to be inappropriate for regulating development in a market economcy because they were too general or related to obsolete types of development.

In the absence of extensive coverage by valid local plans, the majority of development in Poland is currently governed by "decisions on development conditions" (*decyzja o warunkach zabudowy*) or "decisions on the location of public land uses" (*decyzja o lokalizacji celu publicznego*). These decisions could be understood as similar to development permits, but they are not connected with any local plans.

In general, compensation claims may pertain to (1) the introduction or amendment of a new local plan, or, (2) where there is no approved plan - a decision on development conditions, or (3) a decision on the location of public land uses. These latter two instruments may soon be phased out (probably in 2009), in favor of another system that would facilitate the issuing of devleopment permits in areas where there are no plans as yet.

The following part deals with direct injuries stemming from planning decisions. Part V is devoted to indirect injuries – those that impact neighboring plots.

## H1. COMPENSABLE DIRECT PLANNING INJURIES

Planning regulations may have a direct negative effect on property where the owner (or perpetual user) is unable to realize the market value that would have been obtainable had the owner's land not been affected by the regulations. This is because prospective purchasers will either not proceed with the purchase or, having learned of the planning proposals, only offer a lower price.

There are two distinct types of direct planning injuries. The first type may be translated from Polish as "planning expropriation" (what Americans may call a total "regulatory taking"). This occurs when the regulation of property significantly restricts its use and causes a major reduction in its value. The second type is known as "minor planning injuries," which occur when planning regulations do not significantly limit the use of land but nevertheless diminish its value.

The statutory foundation of the right to compensation for direct planning injuries is insufficient, resting only on articles 36 and 37 of the Land Planning and Management Act of 2003 ("LPA" for short; in Polish - *ustawa o planowaniu i zagospodarowaniu przestrzennym*.[39] In some situations, two other statutes provide some additional grounds for claiming compensation: the Land Administration Act of 1997 (discussed in Section V),[40] and the Environmental Protection Law 2001 (EPL 2001) (discussed in Section IV 2).[41] Controversially, land designated for public roads is excluded from planning injury provisions.

The discussion below first focuses on what may be called "planning expropriation". We then discuss compensation rights for minor planning injuries due to what Americans would call

---

39. *See* ZBIGNIEW NIEWIADOMSKI ET AL.,KOMENTARZ DO USTAWY O PLANOWANIU I ZAGOSPODAROWANIU PRZESTRZENNYM THE COMMENTARY TO LAND PLANNING ACT (2d ed. 2005) (Pol.). Unfortunately, the commentary poorly explains the compensation issue.

40. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, arts. 128–135 (amended Oct. 13, 2005) (Pol.).

41. Environmental Protection Law of 2001, Dz. U. of 2001, No. 62, item 627 (amended Jan. 1, 2006) (Pol.).

"downzoning" leading to "partial taking".

*H2 Planning Expropriation (loss of all or most value)*

*H3. Legal Framework According to the Land Planning and Management Act of 2003*

The clearest example of direct planning injuries is "planning expropriation" – where all or most development rights are eliminated. According to article 36(1) of the LPA 2003:

"If the use of property in the former manner has become impossible, or is limited in an essential manner, as the result of a revision in the land-use plan or the issuance of a development permission, the landowner may demand compensation for the actual damage (*damnum emergens)*; or the purchase of the interest in the land (or its part) by the municipality.[42]

The LPA does not limit the type of injurious land uses that may give rise to claims for "planning expropriation". Thus, a literal meaning of article 36(1) of LPA implies that "planning expropriation" may also apply to rezoning for non-public land uses that nevertheless cause a significant decline in property values. [43] (However, as already noted, land designated for future roads is explicitly exempt from compensation claims).[44]

The phrase "limited in essential manner" has not yet been interpreted, either by the Supreme Court or by scholarly doctrine. Due to the lack of any Supreme Court opinion, lower courts independently determine whether property has been taken and, if so, what level of decline in economic value; for example, does a 50% decline constitute planning expropriation? It is my view that any depreciation exceeding 50% should be regarded as "planning expropriation".

Theoretically, an acquisition claim does not even depend on a reduction in the marketability of the property or a decline in the value of the property, but instead refers only to a limitation of the owner's ability to use the property. In other words, a planning expropriation claim is not directly connected with the economic value of the land. Judge Edward Janeczko has gone so far as to suggest that a reduction in land value is irrelevant for determining a planning expropriation claims[45] In contrast, Professor Marek Szewczyk argues that showing a decline in property value is essential to indicate a planning expropriation because the term "deprivation of economic value" in article 36(1) of LPA does pertain to the financial aspect [46]

According to article 36(1) of the LPA,[47] an owner (or perpetual usufruct user) can require a local authority to purchase blighted land. The LPA does not contain any provisions for determining the compensation payable for the acquisition, but analogy to the law on compensation for expropriation[48] suggests that the level of compensation should equal the market value of the property before it became blighted.

---

42. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 36(1) (Pol.)..

43. *Id*.

[44] *See* Toll Highways Act of 1994, Dz. U. of 2004, No. 256, item 2571, art. 325 (amended Sept. 24, 2005) (Pol.).

45. Edward Janeczko, *Renta planistyczna na the art. 36 ustowy o zagospadarowaniu przestrzennym*, [The Planning Rent under Article 36 of the Land Planning Act. REJENT 2001, No. 1, 117.

46. ZBIGNIEW LEOŃSKI & MAREK SZEWCZYK, ZASADY PRAWA BUDOWLANEGO I ZAGOSPODAROWANIA PRZESTRZENNEGO [PRINCIPLES OF BUILDING LAW AND LAND USE] 154 (2002).

47. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 36(1) (Pol.).

48. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, arts. 128–135 (amended Oct. 13, 2005) (Pol.).

According to article 36(2) of the LPA, however, the planning authority may consider adopting an alternative tool—the exchange of property. Formally, an exchange of property between a local authority and a private owner is the only substitute for monetary compensation.[49] Polish planning law does not allow for compensation in forms other than payment in kind.

As an alternative to serving a purchase claim notice under article 36(1) of the LPA, owners of blighted property can choose to limit their claims to monetary compensation, without demanding that municipalities acquire the land. The right to compensation is limited only to "actual damage." This term signifies the existence of effective damage to the injured owner's property (*damnum emergens*), as opposed to so-called hypothetical harm, i.e., profits which the injured owner could have obtained had the harm not occurred (*lucrum cessans*). This statutory limitation is an exception to the principle expressed in article 361, section 2 of the Civil Code, according to which compensation encompasses both *damnum emergens* and *lucrum cessans*.[50] In other words, this rule excludes the right to compensation for lost profits (from commercial activities, for example), and does not cover disturbance costs (such as removal costs or costs of relocating a business).[51]

*H3. The Acquisition Claim According to Environmental Protection Law*

Property affected by environmental pollution or the like is separately regulated by the Environment Protection Law of 2001 (EPL 2001).[52] Pursuant to article 129 of the EPL 2001, if the use of property is limited in essential manner by a "statute or ordinance of limitation of use," an owner may demand acquisition of the property.[53] The EPL 2001 contains more detailed regulation on regulatory taking than the Land Planning Act of 2003. Specifically, article 132 of the EPL 2001 applies the same rules for compensation as in expropriation cases - the market value standard.[54]

*H2. Compensation for Partial Decline in Value*

This section addresses situations where a planning decision has caused only a partial decline in property value. First, we will examine situations where a plot of land is directly affected by a planning or development decision. Then, we will look at situations where land is indirectly affected by a planning or development decision pertaining to another, adjacent, plot.

Polish law provides rather generous compensation rights in these situations. Whenever planning decisions cause a reduction of the value of property, landowners have the right to claim compensation under certain conditions (see below). There is no minimum threshold, and even a very small depreciation may theoretically create a ground for compensation. Article 36(3) of the LPA provides that when passage of a local plan, or its amendment, causes a decline in property value, the owner, or perpetual user (usufruct holder but not a possessor of a lesser property right)

---

49. Land Planning Act of 2003 art. 36(2).
50. KODEKS CYWILNY [CIVIL CODE] art. 361 § 2 (Pol.).
51. Sąd Najwyższy [SN] [Supreme Court] I CKN 191/98 (Oct. 7, 1998) (Pol.).
52. Environmental Protection Law of 2001, Dz. U. of 2001, No. 62, item 627 (amended Jan. 1, 2006) (Pol.).
53. *Id*. art. 129.
54. *Id*. art. 32.

may claim compensation from the municipality.[55] Furthermore, pursuant to articles 54 and 63 of the LPA, compensation claims can also be filed in cases when, in the absence of a local plan, the issuance of a development-permit decision causes a direct decline in property value (for example, where the land use under a communist-time plan was more lucrative than the current development conditions grant).[56] These types of planning decisions are very frequently used (in the absence of plans in many areas).

The condition for claiming compensation in cases of partial decline in value is that the plot in question has been transferred and the sale price reflected the depreciation. This is stated in Article 36(3) of the LPA. The condition is that the landowner has transferred ownership of the property (or part of it) within five years of the revision of the plan.[57] The original wording of this provision contained the phrase "who sells the property." This phrase was changed in 2004 to "who transfers the property." The transfer of property by civil transaction is *condition sine qua non* for compensation.[58] Under a literal interpretation of the phrase "transfer ownership of the property," compensation is payable when land is sold, exchanged, donated, or contributed by a shareholder to a company. However, the Supreme Administrative Court, in a resolution of seven judges from October 30, 2000, interrupted the term "transfer," more narrowly, as excluding gifting to close relatives.[59]

Scholars have criticizes this judgment. Andrzej Kremis and Jerzy Cisek suggested that a broader interpretation of this phrase, which would encompass the donation of property, is a more appropriate standard for compensation.[60] They argue that the type of transaction in which title of a property is transferred is irrelevant.[61] Szewczyk stated that the plain meaning of the term "transfer" suggested that every form of transferable interest in land falls within the scope of article 36 of the LPA.[62]

The decline in value is defined as the difference between the value of property assessed according to the designation of the land after the new plan (or plan amendment) comes into force, and the value assessed according to the previous land designation.[63] For the many areas in Poland that are not covered by plans or development permissions, the value of the real estate is determined on the basis of the de facto status of the real estate before the local plan was adopted.

Pursuant to article 37(1) of the LPA, the amount of compensation is valued on the date the property is transferred to a third party.[64] The primary base-line for the assessment of compensation is the market value.[65] This valuation is to be based on examining recent sales

---

55. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 36(3) (Pol.).
56. *Id*. arts. 54, 63.
57. *Id*. art. 36(3).
58. Dedication of land due to land subdivision and expropriation is excluded.
59. Naczelny Sąd Administracyjny [NSA] [Supreme Administrative Court] OPK 16/00, ONSA 2001/2/64 (Oct. 30, 2000) (Pol.).
60. Jerzy Cisek and Andrzej Kremis commentary on this resolution Orzecznictwo Sadow Polskich of 2001, No. 10, item 152.
61. *Id*.
62. LEOŃSKI & SZEWCZYK, *supra* note 46, at 156.
63. *Id*.
64. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 37(1) (Pol.).
65. Article 151 of the LAA 1997 defines market value as the expected price achievable on the market, when the parties of the transaction were not related, and were not acting under pressure Land Administration Act of

prices for other properties in the area deemed to be comparable to the property in question. The level of compensation is established by the date on which a property is transferred.

The right to compensation encompasses the depreciation in the value of land only, and does not include any depreciation in the value of buildings, lost profits, and other possible inconveniences. The compensation also excludes all consequential damages associated with the taking, such as the loss of future profits.

It should be noted, however, that this ordinance is only considered to be a guideline for appraisers on how to prepare valuation reports. Civil courts are not legally bound by these ordinance provisions and may *expand* the scope of compensation for things such as lost profits. In the process of determining compensation, the land appraiser ignores whether the injurious decision is typical for the surrounding area or whether the decision may have been reasonably expected in this particular place and environment.

Once an owner has submitted a compensation claim, the municipality may not pursue an "*ex officio* purchase notice" - i.e., an expropriation.

Let us now turn to the question regarding *expected* development rights or when a request for a building permit is rejected for lack of infrastructure. Polish law lacks provisions for compensation in situations when local planning provisions eliminate the chance for potential development rights not embedded in binding plans. Suppose, for example, that land that had previously by default been used for agricultural purposes is now explicitly designated for agricultural purposes. Suppose further that the local plan converted other parcels close by from agriculture to building, thereby excluding the land in question from development. Under these conditions, the expectations of the land owner for future development and the reduced chance of gaining rights for development are not subject to compensation. In practice, this type of rezoning, which reduces prospective development rights, does occur often in Poland.

By contrast to the wide scope of compensation for loss caused by "downzoning", there are no rights to compensation when a building permit is rejected due to a lack of local public infrastructure. Furthermore, no legal claim can be made against a municipality to oblige it to provide local public infrastructure.

Interestingly, very few claims have probably been submitted so far for partial depreciation (in the absence of national data, no numbers can be provided). The reasons are conjectural: perhaps most planning decisions in fast-developing Poland usually increase property values rather than decrease it. Or the procedures and costs may be prohibitive. In any case, the existence of compensation rights for "partial takings" is ideologically supported and may in the future become a more significant avenue for landowners.

## H1. COMPENSATION FOR INDIRECT INJURIES

We now turn to situations where the decline in property value is caused by an indirect decision pertaining to adjacent land. The decisions may be related to: 1) an expropriation of part of a plot and injury to the reminader ("severance"); 2) an expropriation of an adjacent plot 3) planning decision pertaining to adjacent land.

### *H2. Injurious Affection and Severance Due to the Expropriation of a Part of a Plot*

1997, Dz. U. of 2004, No. 261, item 2603, art. 151 (amended Oct. 13, 2005) (Pol.).

In this section we discuss two situations, both triggered when only part of a property is taken for public use. The first situation is what Americans call "injurious affection", when the market value of the remaining land decreases due to the public land use on the expropriated part. The second situation, known in many countries as "severance damage", refers to the depreciation in the value of retained land caused by the loss of the expropriated part and thereby, the potential use of the land is diminished or the costs of using that land are increased.

Poland does not have any general provisions for compensating for injurious affection or severance of retained land when land is expropriated. Strictly speaking any injuries of retained land are ignored. However, if the remaining part cannot be properly used for a purpose that it had been used for previously the LAA 1997 in article 113 (3) does grant the owner of land that has been partly expropriated the right to compel government to purchase the retained land.[66]

Moreover, the owner of expropriated land who has suffered a severance probably does not have a right to file a claim for a *partial* taking under article 36(3) of the LPA. There is no known case law on this question, but such situations would probably not be eligible for a partial taking claim because the pre-condition that there be a "transfer" of land is missing; Article 36(3) of the LPA [67] probably refers to voluntary transfers only.

A special form of partial taking is articulated by the phrase “restriction on the manner of using property” for the construction of public infrastructure. Section 128(4) of the LAA 1997[68] grants a right to compensation for the depreciation in value to the rest of the plot caused by the easement. Compensation is to be determined by the decline in the value of property caused by the public works. However, due to the manner in which this law is to be administered, this right to compensation usually yields very small amounts of money and is therefore not widely used by landowners.

*H2. Injury stemming from an expropriation of an adjacent plot*

Currently in Poland there are no provisions that grant compensation rights for injuries caused to neighboring properties from the expropriation of an adjacent plot of land for public project. This is currently a very controversial topic especially concerning landowners affected by the many new highways currently being planned and constructed, as well as by cellular telecommunication installations. They are also unable to claim compensation according to the EPA because the authorities have not seen fit to establish a LUZ along such projects (see below).

*H2 Planning decisions regarding an adjacent plot (unrelated to expropriation)*

The right to claim compensation for indirect injuries (unrelated to expropriation) does exist in Polish planning law, but it applies not to the plan-based decisions, but only to

66. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, art. 113(4) (amended Oct. 13, 2005) (Pol.).

67. Adrianna Miller *Niektóre, Problemy Wpływu Miejscowego Planu Zagospodarowania Przestrzennego Na Wartość Nieruchomości,* [Some problems of the Influence of Local Land Use Plan on The Value of Lands] 4 PRZEGLAD USTAWODAWSTWA GOSPODARCZEGO” 18 (2005) (Pol.)

68. Land Administration Act of 1997, Dz. U. of 2004, No. 261, item 2603, art. 124(1) (amended Oct. 13, 2005) (Pol.).

"*conditions of development or designation of a public land use.*[69]" This right is, however, little known, but since development conditions are the main way in which development permission is regulated in Poland today (until more land use plans are completed), this ground for compensation is potentially very significant. When building permits are granted based on such "conditions for development", the value of adjacent plots might be negatively affected. Article 63 of the LPA does not limit the scope of the right to compensation to the area covered by the decision.[70] Pursuant to this article, if the decision caused reduction in the value of properties, article 36(3) and 36 of the LPA shall apply, respectively.[71] So far, no claims have probably been made based on these grounds, but in the future this avenue to compensation may be "discovered" and may lead to many compensation claims. The prospective change in the legislation is expected to be minor and is unlikely to affect compensation rights. The burden of payment will, however, usually not fall on the municipalities but on the party that has requested the development permission.

Beyond these specific planning-based rights, the main instrument intended for compensation for indirect injuries to neighboring land is the Environmental Protection Law of 2001 discussed in section IV C above.[72]

Under article 129(2) of the EPL 2001, affected neighboring landowners are entitled to compensation, which includes reduction in the property's market value, as well as injuries and damages caused by negative environmental effects.[73] However, in order to be eligible for compensation, the affected land must be included within a limited use zone (LUZ).[74] Authorized government agencies are empowered to establish a LUZ if it is expected that the project will significantly impacts the natural or human-made environment. Furthermore, government has discretion whether to establish a LUZ and very few have been created to date.

The opportunities – as well as the difficulties - of exercizing compensation rights under EPA are well illustrated by the LUZ around the military airfield Krzesiny near Poznan. There, a significant disturbance is caused by noise generated by the movement of harrier airplanes. About 3000 landowners located in the LUZ organized and submitted compensation claims under EPL, claiming that the value of their property has depreciated due to the direct effect of the noise or other physical factors resulting from the creation of new public works. As of September 2008, all the claims were rejected by the Ministry of Defense, and approximately 70 appealed to the courts. The majority of the appeals were rejected, but in ten cases the court ruled that they should be compensated. However, the levels of compensation ordered by the court – EU 10,000 – 20,000 – were unacceptable to the landowners and several are currently appealing to the Polish Supreme Court.

## H1. Procedural Aspects of Compensation Claims

### *H2 Authorities Responsible for Compensation*

69. *Id*.
70. *Id*.
71. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 63(3) (Pol.).
72. Environmental Protection Law of 2001, Dz. U. of 2001, No. 62, item 627 (amended Jan. 1, 2006) (Pol.).
73. *Id*. art. 129(2).
74. Limited use zones (LUZ) are created if a project may have significant impact on the environment.

Under the Land Planning Act of 2003, compensation is always payable by the *gmina*, which is the basic organizational unit of local government.[75] The municipality's officers acquire property and pay compensation on behalf of the *gmina*. The *gmina* is the only legally responsible authority; it does not matter which of the authorities or developers was responsible for the taking of property or for the decline in the value of the property. The rationale for sole *gmina* responsibility has not been articulated by the legislature thus far. I assume that it is based on the idea that because the *gmina* is the local government body that approved the planning decision, it should therefore pay for the negative results of its planning decisions.

Suppose that part of the land was designated for a 100 foot metal tower and eight electric wires and that this plan was approved on the basis of a proposal by the electric company. In this scenario, the *gmina* is the government body that must compensate the landowner. Pursuant to article 36(1) and 36(3) of the LPA, there are no exceptions to the municipality's direct responsibility.[76] At the same time, the gmina is the only government body that is entitled to impose and collect any land development levy.

The LPA, however, introduces one provision which may be described as creating indirect responsibility of the local county (*voivodeship*) authority that is limited to injuries caused by the provisions that a regional plan dictates to a local plan. According to article 44(4) of the LPA, the local government negotiates the sum of money necessary to pay compensation with the county marshal, and they sign an agreement.[77] If negotiations with the *gmina* fail due to disagreement about the conditions for incorporating a regional policy into a local plan, a court will adjudicate this issue.

In addition to this general rule, where "conditions for development" are concerned, article 63(3) of the LPA sets a special rule regarding the party responsible for paying compensation[78]. This applies only to cases when a decision on development conditions benefits the party requesting the permission and harms a neighboring landowner. Similarly, detrimental effects on land values claimed according to the EPL are to be paid by the developer whose project significantly impacts the environment – whether public or private.[79]

*H2. Entitlement to Compensation*

Pursuant to article 36(1) and (2) of the LPA, a person who has a valid property interest at the time of either the approval of a local plan or the issuance of a decision pertaining to site development (determination day) is entitled to compensation.[80] Valid property interests are limited to ownership or usufruct. Thus, it is important to identify the underlying ownership interest that serves as the basis for the claim. A person who bought land after approval of a local

---

75. In Poland there is a three-tier division of local government: the *gmina* (basic level), the *powiat* (an intermediate level), and the *voivodeship* (major territorial unit). In a municipality village, the *gmina* is represented by a mayor (*wojt*). Depending on the size and character of the municipality, the *gmina* in a city is represented either by a mayor (*burmistrz*) or a president.

76. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, arts. 36(1), (3) (Pol.).

77. *Id*. art. 44(4).

78 Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 63(3) (Pol.).

79. Environmental Protection Law of 2001, Dz. U. of 2001, No. 62, item 627, arts. 134, 136 (amended Jan. 1, 2006) (Pol.).

80. Land Planning Act of 2003, Dz. U. of 2003, No. 43, item 296, art. 36(1)–(2) (Pol.).

plan has no right to compensation. However, a compensation claim may be transferred to another person, according to the general rules contained in the Civil Code.

*H2. Time Limit of Claims*

Where "planning expropriation" is concerned, in the LPA there is no specific time limit for the submission of purchase or compensation claim under articles 36(1) of that Act. There appears to be a problem with the interpretation of expiration issues in this context.

Legal scholars have presented contradictory views on this issue. Tadeusz Kasinski for example, has stated that acquisition claims have no expiration dates.[81] By contrast, Szewczyk has argued that regulatory taking claims expire after five years.[82] In my opinion, the acquisition and compensation claims mentioned in article 36(1) and (2) of the LPA can be made within ten years of the date on which the local spatial development plan, or an amendment to it, was enacted as is the case with other civil claims, according to article 118 of the Civil Code.[83]

Compensation claims for cases that do not qualify as expropriation-like cases may be made within five years of the date on which the local spatial development plan, or amendment to it, was enacted. Local authorities theoretically have no discretion to extend this period, although under article 119 of the Civil Code, they may renounce an "objection of limitations," but only after this five year period has passed.[84] In practice, the municipalities do not use this mechanism.

Claims for injurious affection to the remaining part of a plot that was partially expropriated generally have no time limit because compensation claims for expropriation have no time limit. It should be noted, however, that there is a disagreement in the administrative courts on this issue.

*H2. Information for Landowners*

Generally speaking, direct notification to the landowner about a prospective or approved plan that may reduce property values is not mandatory. The procedures for implementing a local plan only require posting the draft of a local plan for public display. Plans are displayed for a twenty-one-day period. Previously, the local government was obliged to provide written notification to landowners whose legal interests might be significantly affected by plan provisions, stating the last date by which landowners may look at the draft plan in the municipal office. Under current law, the municipality is only obliged to publish a public notice of the resolution to prepare a local plan in a local newspaper and in any additional manner that is customary for that municipality. In judicial practice, landowners in many cases have stated that they were not aware that part or all of their land had been designated for things such as a new road.

*H2 Procedure for Making a Claim and Appealing a Decision*

The regulations concerning the procedures for making a claim are insufficient. The

81. Tadeusz Kasinski, *Local Land Use Plan: A Special Form of Non-Compensable Expropriation of Land*, 3 MONITOR PRAWNICZY 95 (1997) (concerning the interpretation of article 36(1) of the LPA 1994, which was reproduced in LPA 2003).

82. LEOŃSKI & SZEWCZYK, *supra* note 46, at 154.

83. KODEKS CYWILNY [CIVIL CODE] art. 118 (Pol.).

84. *Id*. art. 119.

landowner must initiate first serve a purchase or compensation claim on local authority. Under the LPA, compensation procedures may not be initiated *ex officio* by local authorities. After being served notice, in practice, the *gmina* produces either a specific valuation report prepared by a land appraiser commissioned by the *gmina* or a general analysis of the value of the land in that city, which is also prepared by a land appraiser. Where claims for "planning expropriation" under article 36(1) of the LPA are concerned, the specific appraisal report and the general value analysis are not mandatory. By contrast, where claims for partial decline under article 36(3) are concerned, a written opinion is necessary, and the level of compensation is strictly regulated.[85]

According to the LPA, the *gmina* has six months to negotiate an agreement. However, this is not a deadline for the finalization of an agreement because the municipality can decide to acquire the land. In this situation, compensation can be paid at any time if the two sides agree. If there is a delay in the payment of compensation or a delay in the purchase of the property, the municipality must pay interest at a statutorily dictated rate.

In the absence of an agreement after a six month period, an owner may file suit against the *gmina* in civil court. The form of a purchase notice against the municipality or a compensation claim is not regulated. There is no special tribunal for adjudicating land compensation cases.[86] The independent civil courts (both district and regional) have jurisdiction to hear compensation cases.[87] Claimants are required to pay filing fees.

According to Article 367 of the Civil Procedure Code, the party has the right to appeal the decision of the first instance court to the second instance court.[88] The appeals route is from a judgment of the district court to the regional court and from the regional court to the court of appeals. Additionally, certain judicial decisions issued by second instance courts may be the subject of appeal to the Supreme Court, which is the third instance court.

*H2. The Burden of Proof*

Before a court, the owner bears the burden of proof of proving that a basis for compensation or acquiring property exists. The average cost of a written opinion of a land appraiser is approximately 100 Euros. This situation is strongly criticized by commentators as placing a heavy burden on landowners to prove that their property has lost most of its value.[89]

Polish jurisprudence has not yet applied notions of distributive justice in compensation cases. However in theory, the courts should be able to incorporate distributive justice in their decisions because article 5 of the Civil Code states that no one shall exercise any right of his manner contrary to their socio-economic purpose or to the principles of co-existence with others (*zasady wspolzycia społecznego*).[90] Therefore, it is theoretically possible for a court to reject a compensation claim because, on balance, the benefits from the planning or development-control decision outweigh the damage to the owner. We are still waiting for precedent based on

---

85. *Cabinet's Ordinance of 21 September 2004 on the Detailed Rules and Procedure for Preparation of the Valuation Report*, *in* OFFICIAL JOURNAL OF 2004, No. 207, item 2109.

86. For example, there is no Polish equivalent of the land tribunals that exist in England.

87. District courts deal with all matters concerning property law, in which claims do not exceed PLN 75,000 (in common civil cases). The claims exceeding the above stated amounts are heard by regional courts.

88. KODEKS POSTĘPOWANIA CYWILNEGO [CODE OF CIVIL PROCEDURE] art. 367 (Pol.).

89. TOMASZ BAKOWSKI, USTAWA O PLANOWANIU I ZAGOSPODAROWANIU PRZESTRZENNYM: KOMENTARZ [COMMENTARY ON LAND PLANNING LAW 2003] 115 (2004); Kasinski, *supra*, note 81.

90. KODEKS CYWILNY [CIVIL CODE] art. 5 (Pol.).

distributive justice considerations.

## H1. CONCLUSIONS

All the problems outlined above indicate that the existing law definitely needs to be revised. First, for legal clarity it is necessary to delineate a boundary between a regulatory taking ("planning expropriation") and a "partial reduction" in the value of property that gives a right to compensation without acquisition by the government (if the other conditions for such claims are met). This author suggests that a depreciation of fifty percent or more should be the differentiating line. Second, the scope of compensation claims should be expanded to cover injuries affected by new highway schemes to adjacent land, even where no land is physically taken. Third, expropriation regulations should be revised to extend the right to compensation for injurious affection and severance.

Currently in Poland, there are no published court opinions relating to compensation claims related to planning law. Hopefully, this will change in the near future because many local plans have been recently adopted and more claims may be expected, and the courts may be called upon to clarify some of the legal questions. A rise in the number of claims may also be expected due to the rise in the value of real property in Poland; a small percentage of depreciating may be worth enough to justify making a compensation clams. It can also be expected that in the future landowners will be more aware of their rights. Currently, many landowners are not aware that new plans have been approved due to insufficient information to the public.

In July 2008 the Polish government released a draft of the Land Planning Amendments. Unfortunately the first version of the bill does not contain any changes in the basic principles of regulating compensation.

In view of the lack of a proper legal foundation in court decisions, there are many inconsistencies and uncertainties in administrative practice and local authority policies. The existing law is therefore difficult to apply and there is an urgent need for a thorough revision. Currently, procedures for making claims are too cumbersome and the costs are too high. Polish landowners need and merit better protection and more generous and certain compensation rights.